

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LAKEWOOD ENGINEERING AND MANUFACTURING COMPANY¹

Employer

And

UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA AND ITS LOCAL (UE)

Petitioner

And

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 743, AFL-CIO

Intervenor

Case 13-RC-20869

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time production, maintenance and warehouse employees employed by the Employer at its facilities currently located at 501 N. Sacramento Blvd., Illinois and 1901 W. Carroll Street, Chicago, Illinois; but excluding all other employees including truck drivers, quality assurance, product engineering, manufacturing engineering, technicians, customer service, sales, office expeditor, security, office and clerical employees, temporary employees, supervisors and assistant supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike,

who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Electrical, Radio & Machine Workers of America and its Local (UE) or the International Brotherhood of Teamsters, Local 743 or neither.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before December 30, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by January 6, 2003.

DATED December 23, 2002 at Chicago, Illinois.

/s/Harvey A. Roth

Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing have been carefully considered.
- 3/ The Employer (herein "Lakewood") is an Illinois corporation engaged in manufacturing.
- 4/ The Petitioner (herein "UE") and Intervenor (herein "IBT 743") seek to represent a unit of all full-time production, maintenance, warehouse and toolroom employees employed at Lakewood's facilities on W. Carroll Street and N. Sacramento Blvd. in Chicago, Illinois; excluding all other employees including quality assurance, product engineering, manufacturing engineering, customer service, sales, office expediter, security, office and clerical employees, temporary employees, supervisors and assistant supervisors as defined in the National Labor Relations Act. This unit sought by the Petitioner and the Intervenor is identical to the unit covered by the current collective-bargaining agreement between Lakewood and IBT 743. Lakewood asserts that the unit must be modified in that: (1) truck drivers should be specifically added to the list of unit exclusions; and (2) toolroom employees should be removed from the list of unit inclusions. In support of these positions, Lakewood argues that its truck drivers are represented by another union that is not a party to the instant proceeding, and that it no longer operates a toolroom or employs toolroom employees. Rather, Lakewood asserts that most of its toolroom employees were promoted to the position of technicians, which as technical employees under the Act should be excluded from the unit; the UE and IBT 743 argue that the technicians are not technical employees under the Act; or, even if they are technical employees, they share a sufficient community of interest with the other unit employees to warrant inclusion in the unit.

Based upon the record evidence and the applicable case law to be discussed below, I will specifically exclude the truck drivers from the unit description because they are represented by a union that is not a party to this case in an appropriate bargaining unit. I will also remove the "tool room employees" description from the unit inclusions because the Employer does not employ any employees in that classification. I also conclude that the technicians do not share a sufficient community of interest to warrant inclusion in the unit. Therefore, I will specifically exclude technical employees from the unit description.

Facts

Lakewood is a manufacturer of portable heaters, portable fans, Christmas tree stands, chair swivels and light fixtures. Lakewood has two plants in Chicago, Illinois: one is located at 501 N. Sacramento Blvd. and the other is located at 1901 W. Carroll Street. Although Lakewood manufactures all of its products at both of these plants, the majority of the metal products are manufactured at the Sacramento Blvd. facility and the majority of the plastic products are manufactured at the Carroll Street facility.

Lakewood employs approximately 300 plant employees who are covered by a current collective-bargaining agreement between Lakewood and IBT 743 effective from March 12, 1999, through January 1, 2003. The Lakewood employees covered by the IBT 743 contract typically work in three shifts at both the Sacramento Blvd. and Carroll Street

facilities: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7 a.m. In addition to these employees, Lakewood employs truck drivers who are currently and who have been historically been represented by the International Brotherhood of Teamsters Local 705.

Approximately 12-18 months ago, Lakewood eliminated its toolroom and its five or six unit toolroom employee positions. Lakewood Manager of Manufacturing Operations Paul DesJardins testified that during this time period, Lakewood began to outsource its tool and die work to outside vendors and began removing the lathes, screw machines, mills and other equipment that was used to make tooling. According to DesJardins, Lakewood does not intend to bring tool making back into its plants. Once the toolroom was eliminated, two toolroom employees were transferred to machine operator positions, and three toolroom employees were promoted to the position of technician. All of the technicians currently work at the Sacramento Blvd. facility, and DesJardins testified that Lakewood has no intention to employ any at its Carroll Street facility.

DesJardins testified that, prior to the elimination of the toolroom, the primary function of the tool and die employees was to manually make and repair dies. To do so, the toolroom employees used equipment such as lathes, screw machines and mills. DesJardins testified that, after the elimination of the toolroom, the primary function of the technicians is to design tooling by programming two types of computers. According to DesJardins, while toolroom employees performed all of their work by hand, technicians do not manually operate machines. The technicians receive on-the-job computer training and spend about 50% of their time operating computer and control (CNC) and electronic discharge machine (EDM) computers which design tooling. The technicians spend the other half of their time operating measuring equipment, grinding machines and performing technical support. However, the evidence show that, among all of the technicians, only a few hours per week is currently spent repairing dies. Only the quality engineers, who the parties stipulate are and have historically been excluded from the unit, share any equipment with the technicians. None of the production, maintenance or warehouse employees receive training on the computer equipment utilized on a daily basis by the technicians.

The production, maintenance and warehouse employees work within the Production, Manufacturing and Traffic Department and are supervised by approximately twenty-five front-line production and maintenance supervisors. Conversely, the technicians work within the Tooling Design & Engineering Department and are supervised by Tool Design and Engineering Manager Harry Zech. Zech does not supervise any unit employees. In addition, DesJardins testified that the technicians receive additional benefits (such as increased number of personal days) than do the production, maintenance and warehouse employees, as well as higher hourly wages.

The technicians currently work both on the main floor and on the second floor of Lakewood's Sacramento facility. All production, maintenance and warehouse employees work on the main floor. On a daily basis, the technicians interact with engineering and

fabricating supervision, from whom they receive their instructions for tooling. In addition, DesJardins testified that the technicians interact on a regular basis with employees in quality control, project engineering, manufacturing engineering and the machine operators. DesJardins testified that the technicians' interaction with the machine operators (who are stipulated as part of the unit) is "very little," about five to ten percent of there times when they are performing die repair. According to DesJardins, the technicians spend the vast majority of their time with the product engineers and receive instructions from the engineering supervisors. Once the technicians design the tools to make the products, they bring their designs to the manufacturing supervisors rather than the manufacturing, production or warehouse employees.

Analysis

The preliminary issue to be addressed in the instant case is whether the classification of "truckdrivers" should be specifically excluded from the unit description herein. All parties to this proceeding stipulated and the record made clear that the truck drivers historically have been and currently are represented by another, non-party union. At the time that IBT 743 and Lakewood signed the collective-bargaining agreement in February 2000, truck drivers were not specifically listed in the exclusions, but they have always been treated as an excluded classification. Accordingly, I find that a unit description that excludes the truck drivers describes the bargaining unit most clearly, and I will thus specifically exclude them.

The next issue to be addressed is whether the classification of "toolroom employees" should be removed from the unit description herein. Based on the record evidence, I find that the classification of toolroom employees should be removed from the unit description. The parties stipulate that the toolroom has not existed at Lakewood for the past 12-18 months. Lakewood management testified without contradiction that its toolroom will not be operational in the future and that all of its toolroom employees have been permanently moved into other hourly positions. Since there have not been employees in the disputed classification for at least one year, and there is no evidence from the record to suggest that there is there will again be employees in this classification, I find that it is reasonable to remove the "toolroom employees" classification from the unit description.

The remaining issue to be addressed in this case is whether it is appropriate to include the technicians in the production, maintenance and warehouse unit. The touchstone for determining the appropriate bargaining unit is based on a community of interest analysis. *Florida Casino Cruises, Inc.*, 322 NLRB 857 (1997); *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). A multitude of factors must be examined in evaluating a proposed unit's community of interests: similarity in skills, duties and working conditions; functional integration of the operation, including interchange and contact among the employees; common supervision; and work situs, general working conditions and fringe benefits. *Space Mark, Inc.*, 325 NLRB 1140 (1998). The Board has held that when arguably separate groups of employees share a substantial community of interest, a conclusion must be reached that these groups of employees comprise the

minimum appropriate unit for purposes of collective bargaining. *Harrah's Club*, 187 NLRB 810 (1971). However, the burden is on the party challenging the petitioned-for unit to show that said unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988).

Based on the community of interest criteria as promulgated by the Board and the record herein, I find that the technicians do not share a community of interest with Lakewood's maintenance, production and warehouse employees such that they should be included in the unit for the purposes of collective bargaining. Rather, I find that the unit herein must exclude the technicians.

The record clearly shows that the technicians do not possess similar skills or duties to those of the remaining classifications of hourly employees. Technicians are the only group required operate tooling computers, for which they receive on-the-job training. The record evidence establishes that none of the production, maintenance or warehouse employees receive training on the technicians' computers. None of the unit employees substitute for the technicians. Furthermore, the record indicates that work-related contact between the technicians and the other hourly employees is minimal, limited to 5-10 percent of their time while they perform die repairs a few hours per week. The majority of the technicians' work-related contact is with non-unit employees such as engineers and quality control as well as several types of engineering and fabricating supervisors. Regarding working conditions, the technicians enjoy some additional benefits and higher wages than the other hourly employees. The technicians do not share common supervision with the unit employees; technicians report to the Tooling & Engineering supervisor and the unit employees report to production and maintenance supervisors.

The Board has consistently found that employees who do not share a majority of the community of interest factors should not be placed in the same unit for collective bargaining. Rather, the Board has held that employees who do not share a substantial community of interest should be placed in distinct units. See *Lawson Mardon U.S.A.*, 332 NLRB No. 122 (2000); *The Aerospace Corporation*, 331 NLRB No. 74 (2000).

Based on the record evidence presented herein, I find that the majority of the community of interest criteria is not present in this case. Based on the fact that they do not share a similarity in duties, skills or supervision, and because they have minimal contact or interchange, I find that the technicians do not share a community of interest with any of the other hourly employees. Thus, Lakewood has met its burden to show that the inclusion of technicians in the unit is inappropriate. *P.J. Dick Contracting, Inc.*, supra. Therefore, I find that the production, maintenance, and warehouse employees by themselves comprise a homogeneous grouping of employees warranting a separate unit. In sum, I conclude that all full-time production, maintenance and warehouse employees at Lakewood's Sacramento Blvd. and Carroll Street facilities constitute an appropriate unit for collective bargaining.

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In sum, the unit I find appropriate specifically excludes the truck drivers and technicians. There are approximately 295 employees in the unit found appropriate.

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